

(2009) 12 MAD CK 0033

In the Madras High Court

Case No : Tax Case (Revisions) No's. 2328 and 2258 of 2008

State of Tamil Nadu

APPELLANT

Vs

Hydels Engineers (P) Ltd.

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 6(2), 8(3)

Citation : (2010) 35 VST 262

Hon'ble Judges : M.M. Sundresh, J; K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Haja Nazirudeen, Special Government Pleader T, for the Appellant;
S. Ramanathan, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—These revisions are at the instance of the Revenue against the orders of the Sales Tax Appellate Tribunal dated

December 23, 1993 in Madurai Tribunal Appeal Nos. 702 and 703 of 1992 relating to the assessment years 1989-90 and 1990-91, wherein and

whereby the Tribunal has accepted the case of the Assessee that the transactions effected by it are covered within Section 6(2)(b) of the Central

Sales Tax Act and not a local transaction, which is exigible to tax under the Tamil Nadu General Sales Tax Act.

2. The facts : The Assessee is a dealer in pumps, spares and electrical goods at Madurai. After obtaining orders for the supply of pumps and

motors from the dealers within the State, it placed orders with the suppliers in Pune and requested the suppliers to move the goods directly to the

places where the ultimate buyers were doing business. The lorry receipts received by the Assessee were endorsed in favour of the ultimate buyers.

The Assessee claimed exemption on the turnover of Rs. 1,42,370 for the assessment year 1989-90 and Rs. 1,00,129 for the assessment year

1990-91 u/s 6(2) (b) of the Central Sales Tax Act, 1956. The assessing officer disallowed the claim of exemption. Aggrieved by the same, the

Assessee filed appeals before the Appellate Assistant Commissioner in AP. Nos. 16 and 15/92, who after taking into consideration all the

materials placed before him, held that a turnover of Rs. 47,000 was eligible for exemption u/s 6(2)(b) of the Act and a turnover at Rs. 95,370 was

not eligible for the exemption in respect of the assessment year 1989-90. For the assessment year 1990-91, the Appellate Assistant Commissioner

confirmed the assessment order and dismissed the appeal. Aggrieved against the order, the Assessee preferred an appeal before the Tribunal. The

Revenue, on its turn, filed an enhancement application in respect of that portion of the order, which has been decided by the Appellate Assistant

Commissioner, in favour of the Assessee for the assessment year 1989-90 allowing exemption at Rs. 47,000. The Tribunal, after hearing the

parties, and based upon the materials on record, allowed the appeals, by granting exemption claimed u/s 6(2)(b) of the Central Sales Tax Act, in

respect of both the assessment years. The correctness of the same is now under challenge in these revisions at the instance of the Revenue.

3. The reasons given by the assessing officer for non-suiting the claim of exemption, as claimed by the Assessee are that the mere endorsement

does not constitute a sale in transit. Sale between the dealer and the ultimate buyer had been completed only after concluding the sale, the dealers

have issued despatch instructions to the suppliers to despatch the goods, it cannot be claimed that the dealer could get the order from various

parties from Tamil Nadu and place the order to the suppliers in other States, issue despatch instructions, receive lorry receipt and make an

endorsement and then claim it as a transit sale. On that reasoning, it was concluded that the transaction in this case is not a sale in transit as defined

u/s 6(2) (b) of the Central Sales Tax Act. The Appellate Assistant Commissioner had accepted a part of the turnover in which the ultimate buyer's

name has not been indicated and rejected the part of the turnover in respect of which the invoice indicates the name of the ultimate purchaser. In

addition to that, there was some difference between the invoice raised by the supplier from Pune and the invoice raised by the dealer. On that

score, the Appellate Assistant Commissioner found that the goods started from Pune and ended with the Assessee and thereafter the goods were

transferred to the ultimate dealers. Thus, there is a snap in the transaction. The transaction was completed on the goods reaching the Assessee and

thereafter the goods supplied to the ultimate dealer could not be regarded as a continuous transaction.

4. Section 6(2) of the Central Sales Tax Act lays down that the sale in the course of the inter-State trade or commerce of goods of the description

referred to in Section 8(3) from one State to another or has been effected by transfer of documents of title to such goods during their movement

from one State to another. Any subsequent sale to a registered dealer during such movement effected by a transfer of documents of title to such

goods shall not be subjected to tax under the Act. But the proviso to Section 6(2) states that the exemption of such subsequent inter-State sales is

conditional upon the dealer furnishing to the prescribed authority in the prescribed manner a certificate duly filled and signed by the registered

dealer by whom the goods were purchased containing the prescribed particulars. In order to claim exemption, it will have to produce not only C

form from the supplier, but also EI form certificate from the dealer. From the provisions it is clear that availing of the benefit u/s 6(2) of the Act,

second or subsequent inter-State sales must have been effected by transfer of documents of title to goods.

5. The factual finding of the appellate authority that the link was broken when the goods reached the Assessee, but for arriving at such a conclusion

there was no material. The one and only material on which the Appellate Assistant Commissioner has come to the conclusion was that there was

some difference in the description of the goods in the invoice of the supplier from Pune and invoice raised by the Assessee after making an

endorsement in the document of title--the lorry receipt. The Assessee has given the full description of the goods whereas the selling dealer of Pune

has not given full description. Mere giving full description of the goods, ipso facto, would not change the character of the transaction. What is

relevant in this case is whether the goods have reached the ultimate buyer on the Assessee transferring the document of title to the goods, when the

goods were in transit. In this aspect, there is no finding whatsoever either by the assessing officer or by the Appellate Assistant Commissioner to

the contrary. The Tribunal has recorded a clear finding to that effect. The original lorry receipt in respect of the sale in favour of the Assessee and

destination point at Madras and those lorry receipts which are the documents of title were endorsed and transferred to the ultimate purchaser of

the Assessee.

6. The requirement of section has been considered by the Division Bench of this Court in the case of Duvent Fans Pvt. Ltd. v. State of Tamil Nadu

[1999] 113 STC 431, wherein it was observed that what is material for the purpose of Section 3 of the Act is the movement of goods from one

State to another, as a result of sale or purchase, and it is not essential that a direction for the movement of the goods be expressly set out in the

contract. It can also be incidental to the transaction of sale. The same is the opinion of the Gujarat High Court in the case of State of Gujarat v.

Haridas Mulji Thakker [1992] 84 STC 317.

7. Having regard to the facts, as stated above, we are of the view that there is absolutely no material to take a different view than that of the

Tribunal, so as to come to a conclusion that the movement of the goods has been broken at the end of the Assessee and the Assessee has

subsequently sold the goods to the ultimate dealers in Tamil Nadu and as such the Assessee is not entitled to the benefit of Section 6(2) of the Act.

This revisions are dismissed. No costs.